

GULLETT, SANFORD, ROBINSON & MARTIN, PLLC

230 FOURTH AVENUE, NORTH, 3RD FLOOR
POST OFFICE BOX 198888
NASHVILLE, TENNESSEE 37219-8888

TELEPHONE (615) 244-4994

FACSIMILE (615) 256-6339

WWW.GSRM.NET

GARETH S. ADEN
LAWRENCE R. AHERN III
G. RHEA BUCY
CHRISTOPHER W. CARDWELL
GEORGE V. CRAWFORD, JR.
GEORGE V. CRAWFORD III
SCOTT DERRICK
THOMAS H. FORRESTER
MARCY S. HARDEE
M. TAYLOR HARRIS, JR.
DAN HASKELL
ANDRA J. HEDRICK
DAVID W. HOUSTON IV
LINDA W. KNIGHT
JOEL M. LEEMAN
ALLEN D. LENTZ
JOSEPH MARTIN, JR.
JEFFREY MOBLEY

WM. ROBERT POPE, JR.
WAYNE L. ROBBINS, JR.
JACK W. ROBINSON, JR.
JACK W. ROBINSON, SR.
VALERIUS SANFORD
WESLEY D. TURNER
PHILLIP P. WELTY

JOHN D. LENTZ
OF COUNSEL

B. B. GULLETT
1905-1992

November 2, 2001

VIA HAND DELIVERY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201

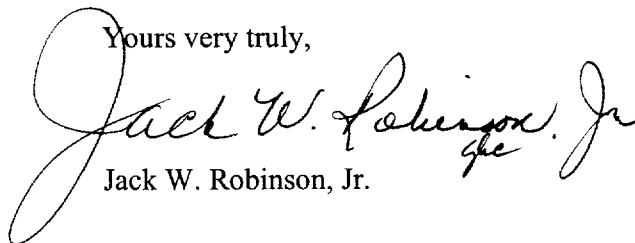
In Re: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s
Operations Support Systems with State and Federal Regulations*
Docket No: 01-00362

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Procedural Motions of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc., with supporting attachment.

Copies are being served on all known counsel of record.

Yours very truly,


Jack W. Robinson, Jr.

JWRjr/ghc
Enclosures

cc: Parties of Record
Sylvia Anderson, Esq.
Garry Sharp

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)	
)	
Docket to Determine the Compliance)	
of BellSouth Telecommunications, Inc.'s)	
Operations Support Systems with State)	Docket No.: 01-00362
and Federal Regulations)	

**PROCEDURAL MOTIONS OF AT&T COMMUNICATIONS OF THE SOUTH
CENTRAL STATES, INC. AND TCG MIDSOUTH, INC**

AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (collectively "AT&T") hereby request that the Tennessee Regulatory Authority ("TRA" or "Authority") grant the following procedural relief for Phase I of this docket: (1) strike specific portions of BellSouth's direct testimony (including exhibits) as outside the scope of the Phase I hearing; (2) revise the procedural schedule to require BellSouth to file rebuttal testimony by November 13, 2001; (3) strike the PricewaterhouseCoopers' Attestation and related documents as hearsay; (4) compel BellSouth and PricewaterhouseCoopers (PWC) to submit affidavits substantiating their claims that documents produced through discovery qualify for confidential treatment; and (5) compel BellSouth to respond fully to pending discovery requests.

ARGUMENT

As explained below, BellSouth is engaging in various tactics that are frustrating the efficient and orderly conduct of this docket. Specifically, BellSouth has filed voluminous direct testimony and exhibits that are largely unrelated to the Phase I regionality issues. Indeed, the testimony that BellSouth has filed does not directly address any of the issues that the Authority so carefully crafted at the outset of this proceeding. BellSouth, moreover, has filed its self-touted regionality attestation as an exhibit to Mr. McElroy's testimony rather than present the attesting

party, Mr. Lattimore of PWC, as a testifying witness at the hearing. BellSouth and PWC also have marked as confidential many of the documents produced in discovery as confidential without submitting the required affidavit to substantiate that the documents truly qualify for confidential treatment. Lastly, BellSouth has not responded fully to pending discovery requests. Each of these actions alone cause unnecessary delay and disruption to orderly conduct of this proceeding. Taken together, these actions (as well as the issues raised in the pending motion for summary findings) threaten to derail this docket. Accordingly, AT&T request that the Authority grant the relief sought so that Phase I of this docket can proceed on schedule and accomplish its intended goals.

I. THE AUTHORITY SHOULD STRIKE BELL SOUTH'S TESTIMONY THAT IS NOT RELATED TO PHASE I

A. The Bulk of BellSouth's Direct Testimony Does Not Relate to Phase I Regionality Issues

The Authority has repeatedly made clear that "testimony offered during each Phase of the proceeding shall relate only to the issues relevant to that Phase." Order Establishing Issues and Procedural Schedule, Docket No. 01-00362, dated September 13, 2001; *see* Transcript of Pre-Hearing Conference (October 9, 2001), at 105. The Authority also has explained that Phase I "will be limited solely to the regionality issue." *Id.* at 7.

Despite these clear directions, BellSouth filed testimony on October 22, 2001 that goes far beyond the regionality of its operational support systems ("OSS"). Indeed, the testimony filed by BellSouth appears to be a subset of the testimony it has previously filed in section 271 proceedings in other states. Accordingly, AT&T respectfully requests that the Authority strike BellSouth's testimony as described below.

Testimony of Milton McElroy, Jr. -- Mr. McElroy submitted 115 pages of direct testimony and sixteen exhibits. The vast majority of this testimony and exhibits -- pages 2 through 102, and exhibits MM-1 through MM12 -- relate to the reliability of the third party tests, which is a Phase II issue. The Authority need only look at Mr. McElroy's own summary to confirm that the bulk of his testimony is outside the scope of Phase I:

BellSouth provides CLECs with nondiscriminatory access to its OSS. BellSouth believes that the third-party test combined with its actual performance data and the modifications to its systems and processes made in connection with the test, confirms this. Over 95 percent of the criteria that KPMG tested passed. Many of the deficiencies have been addressed by actual commercial usage. In addition, BellSouth has taken the necessary action to improve performance in those areas where results were unsatisfactory. BellSouth's recent actual performance, as reflected in its performance reports, shows that BellSouth is currently meeting a very high percentage of the benchmarks and standards adopted by the state commissions and authorities. Finally, the Authority will be able to monitor these issues through these same performance measures as well as the penalty plans that are already in place.

McElroy Direct, at 115. This summary confirms that Mr. McElroy's direct testimony, except as described below, is outside the scope of Phase I and, therefore, should be stricken.

Only twelve pages of Mr. McElroy's testimony (pages 102 through 114) and four exhibits (MM-13 through MM-16) address regionality. In these twelve pages, Mr. McElroy simply recounts a "regionality" attestation that BellSouth had commissioned PricewaterhouseCoopers (the "PWC Attestation") to conduct, and attaches the PWC Attestation and related documents. As explained below in Section II, AT&T requests that the Authority strike the attached PWC Attestation as hearsay expert testimony. Should the Authority strike the PWC Attestation, AT&T requests that the Authority also strike Mr. McElroy's testimony recounting of that attestation.

Testimony of Ronald Pate -- Mr. Pate submitted direct testimony consisting of 190 pages of testimony and 77 exhibits. Mr. Pate divided his testimony into two sections. Section I, which consists of approximately 175 pages, addresses whether BellSouth is providing nondiscriminatory access to its OSS. Pate Direct, at 3. The Authority should strike all of Mr. Pate's Section I testimony and accompanying exhibits because it is outside the scope of Phase I. The remaining fifteen pages of Mr. Pate's testimony (pages 175 through 190) address regionality and, therefore, is within the scope of Phase I. Mr. Pate cites to only one exhibit (OSS-70) in that fifteen pages of testimony. Accordingly, all of Mr. Pate's exhibits should be stricken except for OSS-70.

Testimony of Alphonso Varner -- Mr. Varner submitted direct testimony consisting of eighteen pages and two exhibits. Mr. Varner states that the purpose of his testimony is to provide the Authority with BellSouth's performance measurements service results for May, June and July, as evidence of BellSouth's commercial readiness to handle current and projected demand. Varner Direct, at 2. Such testimony, however, is irrelevant to the regionality issues of Phase I. Accordingly, the Authority should strike all of Mr. Varner's testimony and exhibits.

Testimony of Ken Ainsworth -- Mr. Ainsworth submitted direct testimony consisting of 94 pages and 34 exhibits. Mr. Ainsworth generally describes BellSouth's manual OSS processes, but does not directly address any Phase I issues. Accordingly, the Authority should strike all of Mr. Ainsworth testimony and exhibits.

Testimony of Alfred Heartley -- BellSouth filed testimony from Alfred Heartley. Mr. Heartley's direct testimony and exhibits clearly address regionality and, therefore, properly falls within Phase I.. Accordingly, the Authority should not strike Mr. Heartley's testimony.

In sum, BellSouth once again is flouting the procedural framework set by the Authority. On August 3, 2001, the Authority struck the testimony that BellSouth had filed without authorization. Now, BellSouth has essentially filed unauthorized section 271 testimony that goes far beyond the scope of the Phase I regionality issues. The Authority should strike this unauthorized testimony as well.

B. The Authority Should Prevent BellSouth from Filing its Direct Case in Rebuttal Testimony

The Authority issued a procedural order that provided for the submission of direct and rebuttal testimony in Phase I of this docket. Although BellSouth has the burden to prove that its systems are regionality, the Authority provided for simultaneous filing of testimony, rather than sequential filing. Presumably, the Authority required simultaneous filings for the purpose of compressing the procedural schedule.

As explained herein, the Authority should strike most of BellSouth direct case because: (1) its direct testimony is largely outside the scope of Phase I; and (2) the PWC Attestation is hearsay, expert testimony. The Authority, however, should not allow BellSouth to take advantage of its own transgressions by filing its direct case in rebuttal testimony. From a practical standpoint, CLECs would be denied the opportunity to rebut BellSouth's direct case if BellSouth files that case in rebuttal testimony.

AT&T understands that it may be difficult for the Authority to distinguish between truly direct testimony and truly rebuttal testimony. Accordingly, AT&T requests that the Authority: (1) modify the procedural schedule to require BellSouth to submit its rebuttal testimony on Tuesday, November 13, 2001; and (2) instruct BellSouth to limit that testimony to rebutting the direct testimony filed by CLECs. These actions will help ensure that CLECs have an adequate

opportunity to present testimony rebutting BellSouth's case on November 20, 2001, as contemplated by the Authority's original procedural order.

II. THE AUTHORITY SHOULD STRIKE THE PWC ATTESTATION

During the Pre-Hearing Conferences on September 6, 2001, and October 9, 2001, the Pre-Hearing Officer made it abundantly clear that the Authority must be able to cross exam all witnesses during the hearing in this docket. BellSouth, however, is attempting to preclude the live cross-examination at the hearing of the person responsible for the PWC Attestation regarding the regionality of certain parts of BellSouth's OSS. This is not permitted under Tennessee state law. *See* T.C.A. § 4-5-312 (providing that "[t]o the extent necessary for full disclosure of all relevant facts and issues, the administrative judge or hearing officer shall afford all parties the opportunity to . . . conduct cross-examination"); T.C.A. § 4-5-313 (providing that affidavits shall not be admitted into evidence if an opportunity to cross-examine the affiant at the hearing is not afforded).

The PWC Attestation has been a centerpiece of BellSouth's regionality cases in other states. Despite its awareness of Authority's sentiments regarding the presentation of witnesses at hearings and its own reliance on the PWC Attestation, BellSouth has chosen not to have the PWC representative responsible for the attestation (Mr. Robert Lattimore) file direct testimony. Instead, BellSouth is attempting to bring the PWC Attestation into the record through the back door by attaching the PWC reports and Mr. Lattimore's affidavits as exhibits to Mr. McElroy's direct testimony.

BellSouth's gamesmanship should not be tolerated by the Authority. Essentially, BellSouth is presenting the PWC Attestation as independent, expert testimony. However, the

witness presenting that testimony (Mr. McElroy) is neither independent nor the expert. The Authority and the CLECs, moreover, cannot reasonably cross-examine Mr. McElroy regarding the basis for Mr. Lattimore's independent, expert opinion. At best, Mr. McElroy can only speculate how Mr. Lattimore would answer questions during cross examination. At worst, Mr. McElroy will state that he does not know the answer, which is exactly the situation the Authority has repeatedly stated it intends to avoid in this docket.

Undoubtedly, BellSouth will argue that CLECs and the Authority staff have had the opportunity to depose Mr. Lattimore, and that the deposition transcript can substitute for cross-examination at the hearing. BellSouth, moreover, will argue that AT&T agreed to withdraw or not to move to strike the PWC Attestation in other states if the deposition of Mr. Lattimore was entered into the record.¹ Both arguments miss the point.

First, a cold deposition transcript generally is not an adequate substitute for cross examination at a hearing under Tennessee state law. That is particularly true here because of the Authority's traits. The Authority is a very hands-on regulatory body that often questions witnesses extensively. The Authority, moreover, has a penchant for wanting to observe a witness during cross examination to assess credibility. The Authority is effectively precluded from cross examining PWC on its independent, expert report and evaluating the credibility of the witness in person because of BellSouth's litigation tactic to introduce the PWC Attestation as an exhibit.

¹ No other CLECs were party to that agreement.

Second, the situation here in Tennessee is different than the situations present in the other states. Indeed, that is precisely why AT&T specifically excluded Tennessee from its agreement with BellSouth regarding Mr. Lattimore's deposition. Here, the Authority advised BellSouth of its continued frustration with witnesses not being available at the hearing, and specifically asked whether BellSouth would present Mr. Lattimore as a witness. BellSouth also knew that AT&T has objected to BellSouth's prior practice of attaching the PWC Attestation as an exhibit to the testimony of a BellSouth witness. Nevertheless, BellSouth deliberately chose to include allegedly independent, expert testimony as an exhibit rather than present the real witness, Mr. Lattimore, at the hearing.

In contrast, at the time BellSouth filed its direct testimony in other states, BellSouth presumably was not aware that the CLECs or the respective commission would object to the PWC Attestation on the basis that the Mr. Lattimore would not be a testifying witness. Thus, the parties (BellSouth, CLECs, and the respective commissions) were stuck with trying to make the best of a bad situation. In Tennessee, the bad situation is the direct result of a deliberate decision by BellSouth. BellSouth should be required to live with the consequences of its decision.

III. THE AUTHORITY SHOULD DECLASSIFY DOCUMENTS MARKED PROPRIETARY BY BELL SOUTH AND PRICEWATERHOUSECOOPERS

Section 1 of the Protective Order adopted by the Authority in this Docket (Exhibit 1) provides for the protection of information that qualifies as trade secrets, confidential research, development or other sensitive information. To receive such protection, however, the Protective Order requires that the "document must be accompanied by proof of confidentiality, that is, an affidavit showing the cause of protection under this Order. The Affidavit may be reviewed by the Pre-Hearing Officer, Administrative Law Judge, or the Authority for compliance with this

paragraph." In short, BellSouth has the burden to establish that its documents qualify for confidential treatment under the Protective Order.

BellSouth has marked as confidential many of the documents it has produced during discovery in this docket. For its part, PWC has marked all of its documents produced thus far as confidential. Neither BellSouth nor PWC, however, have provided affidavits to substantiate its claim for protection. Rather, without any support whatsoever, BellSouth and PWC have summarily declared that the documents are confidential.

BellSouth's and PWC's complete failure to follow the terms of the Protective Order frustrates the ability of CLECs and the Pre-Hearing Officer to assess whether the information produced by BellSouth and PWC qualify for confidential treatment. Accordingly, the Authority should direct that BellSouth and PWC submit the required affidavits by a date certain. If the required affidavits are not submitted or are otherwise insufficient, the Authority should rule that the documents do not qualify for confidential treatment.

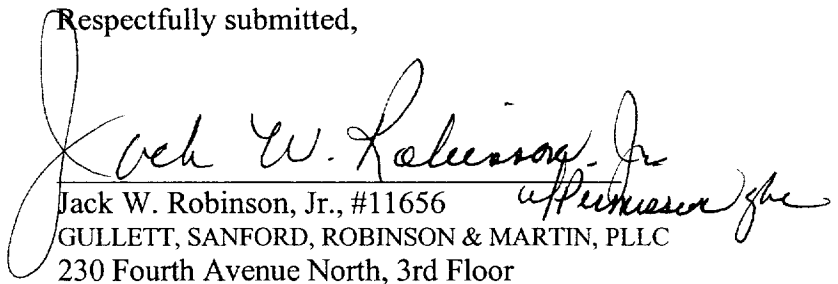
IV. THE AUTHORITY SHOULD COMPEL BELLSOUTH TO PROVIDE COMPLETE AND RESPONSIVE ANSWERS TO PENDING DISCOVERY REQUESTS

BellSouth responded to our discovery requests on October 12, 2001. BellSouth's responses to many of the requests, however, were incomplete. Attachment (1) identifies many of the deficiencies in BellSouth's responses. AT&T requests that the Authority compel BellSouth to supplement its prior responses to make them complete.

CONCLUSION

BellSouth opposed the Authority's initial approach of hiring a third party consultant to evaluate the regionality of BellSouth's OSS and the reliability of test results and performance data from other states in favor of a contested case. Now that it has the contested case it sought, BellSouth is to trying to frustrate the CLEC's ability to prosecute that contested case. BellSouth has filed superfluous direct testimony, attempted to preclude the cross-examination of a key witness, bogged down the process with unsubstantiated claims for confidential treatment of documents, and failed to respond fully to discovery. BellSouth's tactics cannot be tolerated. Accordingly, AT&T requests that Authority grant the relief sought in this motion.

Respectfully submitted,



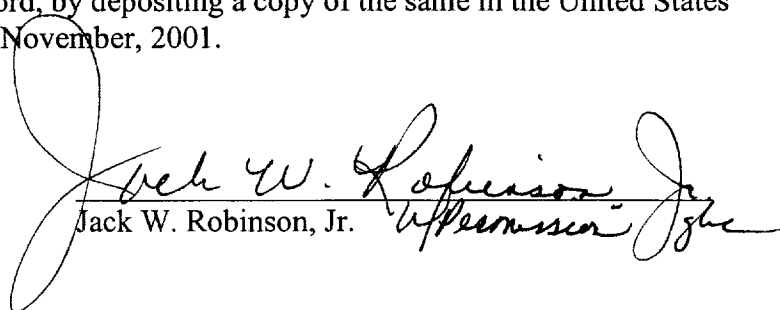
Jack W. Robinson, Jr., #11656
GULLETT, SANFORD, ROBINSON & MARTIN, PLLC
230 Fourth Avenue North, 3rd Floor
P.O. Box 198888
Nashville, TN 37219-8888
(615) 244-4994

Sylvia E. Anderson
AT&T
1200 Peachtree Street, N.E.
Suite 8068
Atlanta, GA 30309
(404) 810-4196

Attorneys for AT&T Communications of the
South Central States, Inc. and TCG MidSouth, Inc.

CERTIFICATE OF SERVICE

I, Jack W. Robinson, Jr., hereby certify that I have served a copy of the foregoing Motion on the following known counsel of record, by depositing a copy of the same in the United States Mail, postage prepaid, this 2nd day of November, 2001.


Jack W. Robinson, Jr.

Guy M. Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

Charles B. Welch, Jr., Esq.
Farris, Mathews, Brannan,
Bobango & Hellen, PLC
618 Church Street, Suite 300
Nashville, TN 37219

Henry Walker, Esq.
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
P. O. Box 198062
Nashville, TN 37219-8062

James Wright, Esq.
United Telephone-Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587

Jon E. Hasting, Esq.
Boult, Cummings, Conners, & Berry, PLC
P. O. Box 198062
Nashville, TN 37219-8062

H. LaDon Baltimore, Esq.
Farrar & Bates
211 Seventh Avenue, N. #320
Nashville, TN 37219-1823

Timothy Phillips, Esq.
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, TN 37202

Fred J. McCallum
Lisa Foshee
BellSouth Telecommunications, Inc.
675 W. Peachtree Street, Suite 4300
Atlanta, GA 30375

Maureen Flood
Competitive Telecom Association
1900 M. Street, NW #800
Washington, DC 20036

ATTACHMENT (1)

Interrogatory No.	Comments
1	BellSouth did not identify the interrogatory with which the named persons were associated.
36	BellSouth states that it <i>does not</i> produce flow through data on a state-specific basis. According to KPMG, however, BellSouth is capable of producing such data. BellSouth, therefore, should either produce the requested data or explain why producing such data is not technically feasible.
51	BellSouth did not identify the internal measures it uses to measure its wholesale operations, such as those at its local carrier service centers (LCSC) or custom wholesale interconnection services (CWINS) center.
52	BellSouth references its response to Production of Documents No. 51. That production consists of approximately two inches of documents that are a mish-mash of billing reports. BellSouth's response does not contain any reports related to other OSS functions. For example, BellSouth did not produce its "Ranking Report," which was identified by Mr. Heartley as a report used by BellSouth and which BellSouth agreed to produce in Kentucky as a late-filed exhibit.
Production of Documents No.	Comments
2	BellSouth did not identify the amounts that BellSouth has paid KPMG for the Florida third party test.
4	This request sought drafts and revisions of the Georgia Master Test Plan, which BellSouth helped developed. BellSouth, however, claims that it has no documents responsive to this request.
5	Upon request, KPMG provided BellSouth with draft test reports at various times while the test was ongoing. BellSouth produced some drafts of the Georgia Final and Supplemental Test Reports, but did not produce any related electronic mail, notes, memoranda and other correspondence. It is difficult to believe no such documents exist.
7	BellSouth objects to this request. The deadline for objections, however, has already passed.
8	BellSouth objects to this request. The deadline for objections, however, has already passed.
9	BellSouth states that it has already produced responsive documents. AT&T, however, has not been able to find any withdrawn draft exception reports in the documents previously produced by BellSouth.

17	BellSouth states that it has no documents responsive to the request that it produce all documents refer or relate to evaluations of the adequacy of BellSouth's change management process in the Georgia and Florida OSS tests. BellSouth, however, must have produced documents to KPMG as part of that evaluation, evaluated KPMG's exceptions and observations, responded internally to such exceptions and drafted responses to KPMG's exceptions. Thus, there cannot possible be no documents in BellSouth's control that are responsive to this request.
40	BellSouth states that it has no documents response to the request that it produce all documents related to BellSouth providing different treatment to local service requests from one or more states (e.g., Florida and Georgia) over local service requests from another state (e.g., Tennessee). This cannot be true. PWC's work papers indicate that BellSouth issued written instructions to stop the preference treatment it had discovered. Also, more likely than not, there were written instructions to institute the practice of preferential treatment in the first place.
41	BellSouth states that it has no documents responsive to the request that it produce all drafts (including those reflecting proposed revisions or comments by either party) or any reports exchanged between BellSouth and PWC regarding the regionality of BellSouth's OSS. In his deposition, however, Mr. Lattimore stated that drafting the attestation report was a collaborative effort. It is difficult to imagine how BellSouth could have collaborated with PWC in drafting the attestation and not have any draft documents.
44	BellSouth references files, but apparently did not produce any such files.
45	BellSouth references its response in North Carolina to a similar request, but the North Carolina request did not include PWC. To the extent that BellSouth corresponded with PWC (including electronic mail), BellSouth must produce those documents.
46	BellSouth produced LCSC production reports and call answer reports, but has not produced the LCSC duration reports, service order accuracy, or questionable activity reports.
51	BellSouth produced approximately two inches of documents that are a mish-mash of billing reports. BellSouth's response does not contain any reports related to other OSS functions. For example, BellSouth did not produce its "Ranking Report," which was identified by Mr. Heartley as a report used by BellSouth and which BellSouth agreed to produce in Kentucky as a late-filed exhibit.
52	BellSouth has not yet responded to this request.

53	<p>The request sought documents that compares or analyzes BellSouth's internal performance data to evaluate the extent to which BellSouth's actual performance results for OSS functions are similar in each state of its nine state region. In response, BellSouth produced the PWC attestation reports. Those reports, however, do not evaluate actual performance results. BellSouth, moreover, did not produce its ranking report, which does compare state-to-state performance.</p>
----	---